



June 1, 2018

FILED ELECTRONICALLY

The Honorable Jocelyn G. Boyd
Chief Clerk
South Carolina Public Service Commission
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Columbia SC 29211

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RE: Complaint and Petition for Declaratory Order of Pay Tel Communications, Inc., Complainant/Petitioner v. Lattice Incorporated, Defendant/Respondent
Docket No. 2017-354-C

Dear Jocelyn:

Enclosed for filing please find the Proposed Order of Pay Tel Communications, Inc.

By copy of this letter, I am serving counsel for the South Carolina Office of Regulatory Staff.

With kind regards, I am

Yours truly,

s/ John J. Pringle, Jr.
John J. Pringle, Jr.

cc: Jenny Pittman, Esq. (via electronic mail service)
Mr. J. Vincent Townsend (via electronic mail service)

**BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2017-354-C**

IN RE:)	
)	
Pay Tel Communications, Inc.,)	
Complainant,)	PROPOSED ORDER OF PAY
)	TEL COMMUNICATIONS,
Vs.)	INC.
)	
Lattice Incorporated,)	
Respondent.)	
)	

This matter comes before the Public Service Commission of South Carolina (“Commission”) by way of the Complaint and Petition for Declaratory Order (“Petition”) of Pay Tel Communications, Inc. (“Pay Tel”), pursuant to 10 S.C. Code Ann. Regs. 103-825 and other applicable rules of practice and procedure of the Commission seeking a Declaratory Order of the Commission that:

- 1) Lattice Incorporated (“Lattice”) is a telephone utility as defined in S.C. Code Ann. § 58-9-10, and is providing inmate telephone services in South Carolina;
- 2) Lattice is required to obtain a certificate of public convenience and necessity (“CPCN”) from the Commission and pursuant to S.C. Code Ann. § 58-9-280(A) prior to offering or providing inmate telephone service in South Carolina, but has obtained no such CPCN;
- 3) Lattice is required to file a tariff schedule that is approved by the Commission before charging any rate associated with inmate telephone services, pursuant to S.C. Code Ann. § 58-9-230(A) and S.C. Code Ann. Regs. 103-603(B), but has filed no such schedule with the Commission or obtained any necessary tariff schedule approval;

4) Lattice is a “public utility” subject to assessment pursuant to S.C. Code Ann. § 58-3-100; and

5) Lattice is a “telecommunications company” providing “telecommunications services in South Carolina” and therefore required to contribute to the South Carolina Universal Service Fund (“USF”) pursuant to S.C. Code Ann. § 58-9-280(E)(2).

In its Petition, Pay Tel alleged that Lattice is providing inmate telephone services to the Union County Detention Center and the Colleton County Detention Center, without a CPCN to provide intrastate interexchange or local exchange service pursuant to S.C. Code Ann. § 58-9-280. In its Answer filed on February 6, 2018, Lattice admitted that “in October 2017 it entered into contracts to provide inmate service to the Union County Detention Center and the Colleton County Detention Center.” Lattice Answer at Paragraph 6.

Subsequent to receiving Pay Tel’s Petition and Lattice’s Answer, the Commission established testimony filing dates for Pay Tel, Lattice, and ORS, and set a hearing for 10:30am on May 1, 2018 at the Commission’s Hearing Room located at 101 Executive Center Drive, Suite 100, Columbia, South Carolina.

At the hearing, Pay Tel was represented by John J. Pringle, Jr., Lattice was represented by Frank R. Ellerbe, III, and ORS was represented by Jenny Pittman.

In support of its Petition, Pay Tel presented the testimony (Direct and Rebuttal) of J. Vincent Townsend, its President. Mr. Townsend testified that Lattice does not hold any authority from this Commission, and withdrew an application seeking authority to provide inmate telephone services in Docket No. 2015-413-C. (Townsend Direct, p. 2, ll. 15-23- p. 3 ll. 1-14).

Mr. Townsend also testified regarding the inmate telephone services being provided by Lattice in Union County and Colleton County. (Townsend Direct, p. 4, ll. 19-23).

Lattice presented the testimony of Terry Whiteside, its Chief Operating Officer. Mr. Whiteside testified that Lattice had entered into contracts to provide telecommunications services to correctional facilities in South Carolina based upon its mistaken belief that Lattice could arrange for the “telecommunications portion of each contract – the part of the contract that is regulated by this Commission – to be provided with another carrier.” (Whiteside Direct, p. 4, ll. 14-19). In order to correct its mistake, Mr. Whiteside testified that Lattice was in the process of removing “Lattice from having any contractual rights or obligations to provide any regulated telecommunication services to the correctional facilities.” (Whiteside Direct, p. 4, ll. 24-31). In addition, Mr. Whiteside testified that Lattice intends to apply to the Commission for authority to become a telecommunications provider in South Carolina. (Whiteside Direct, p. 5, ll. 1-8).

ORS presented the testimony (Direct and Surrebuttal) of Mr. Christopher Rozycki, ORS’ Director of Telecommunications. Mr. Rozycki testified that ORS believes that Commission Order 1991-122 requires Lattice to hold a CPCN prior to commencing operations from a confinement facility in South Carolina, that Lattice does not hold a CPCN, and that it appears Lattice is currently providing telephone service in two confinement facilities in South Carolina. (Rozycki Direct, p. 2, ll. 16-21). Mr. Rozycki also testified that ORS was concerned about Lattice’s financial condition when Lattice previously filed an application in Docket No. 2015-413-C. (Rozycki Direct, p. 3, ll. 10-11). Finally, Mr. Rozycki offered the Commission six (6) recommendations in connection with Lattice and this Docket (Rozycki Surrebuttal, p. 3, ll. 19-22, p. 4, ll. 1-19):

1) that the Commission require Lattice to resubmit, within 30 days, its application for a CPCN to operate as an interexchange carrier (IXC) and inmate service provider in South Carolina;

2) if the Commission approves the application of Lattice for a CPCN, then the Commission should require Lattice to post a bond as required by S.C. Code Ann. Regs. 103-607 (2012);

3) If the Commission does not approve the application of Lattice for a CPCN, then the Commission issue a cease and desist order;

4) That the Commission rule that all services provided by an inmate services provider be designated as regulated telecommunications service, until a provider requests and the Commission determines otherwise;

5) The Commission should notify the inmate facilities where Lattice is under contract and providing service that it is in violation of South Carolina law and operating as a telephone utility without proper authority (CPCN) from the Public Service Commission of South Carolina;

6) The Commission may wish to notify (or request that ORS notify) all South Carolina inmate or confinement facilities, the South Carolina Sheriff's Association, and the South Carolina Jail Administrators that inmate service providers in South Carolina are Telephone Utilities under South Carolina law and must possess a CPCN to operate in the State; and

7) The Commission may wish to request that ORS post a list of all inmate service providers authorized (certificated) to operate in South Carolina.

At the hearing on May 1, 2018 Lattice provided two “Assignment Agreements” pursuant to which all of its contractual rights to provide “Inmate Telephone and Video Visitation Service” to the Union County Sheriff’s Office and the Colleton County Sheriff’s Office were assigned to WiMacTel Inc. effective April 27, 2018. In addition, Mr. Whiteside testified that Lattice intended to file an Application for Authority with this Commission within sixty (60) days. Furthermore, Mr. Whiteside testified that Lattice would be responsible for any regulatory obligations incurred during the time period that Lattice provided regulated telephone services to the Union County Detention Center and the Colleton County Detention Center.

Following the hearing, Lattice provided a Late-Filed Hearing Exhibit Three containing redacted “Inmate Telephone and Video Visitation Service” agreements between Lattice and 1) the Colleton County Detention Center; and 2) the Union County Sheriff’s Office.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. In 2015, Lattice filed an Application with the Commission seeking a “Certificate of Public Convenience and Necessity to Provide Intrastate Resold Institutional Telecommunications Services and for Alternative Regulation Within the State of South Carolina.” See Docket No. 2015-413-C.

2. As set out in its Application, Lattice proposed “to provide automated operator assisted collect and prepaid calling services to inmates and other incarcerated persons in confinement facilities throughout the State of South Carolina.”

3. However, Lattice withdrew its Application, and the Commission approved the withdrawal on February 24, 2016 by Order No. 2016-125.

4. Lattice is a “telephone utility” as defined by S.C. Code Ann. § 58-9-10, but is not currently authorized to provide telecommunications services in the State of South Carolina

5. Based upon the representations of Lattice, the testimony of Mr. Whiteside on behalf of Lattice at the hearing, and Late-Filed Hearing Exhibit Three, Lattice entered into contracts to provide inmate telephone service in South Carolina.

6. Lattice provided inmate telephone services to two inmate facilities in the State of South Carolina: the Union County Detention Center and the Colleton County Detention Center. As of April 27, 2018, Lattice no longer provided inmate telephone services to those inmate facilities.

7. By providing inmate telephone services in South Carolina prior to April 27, 2018, Lattice has operated as a “public utility” subject to assessment pursuant to S.C. Code § 58-3-100.

8. By providing inmate telephone services in South Carolina prior to April 27, 2018, Lattice has operated as a “telecommunications company” providing “telecommunications services in South Carolina” and is therefore required to make contributions to the South Carolina Universal Service Fund (“USF”) pursuant to S.C. Code Ann. § 58-9-280(E)(2).

9. By providing inmate telephone services without a certificate of public convenience and necessity, Lattice is in violation of S.C. Code Ann. § 58-9-280(A).

10. Lattice has filed no tariff schedule with the Commission, and the Commission has approved no rates, terms, and conditions for any inmate telephone services that Lattice might provide.

IT IS THEREFORE ORDERED, ADJUDGED , AND DECREED THAT:

1. Lattice shall obtain a Certificate of Public Convenience and Necessity before offering services as an inmate telephone service provider in South Carolina.
2. Pursuant to S.C. Code Ann. § 58-9-230(A) and S.C. Code Ann. Regs. 103-603(B), Lattice shall file a tariff schedule that is approved by the Commission prior to charging any rate associated with inmate telephone services.
3. All telephone services that touch the Public Switched Telephone Network (PTSN) provided by an inmate services provider in the State of South Carolina are considered “telecommunications services” and regulated by this Commission, unless this Commission rules otherwise.
4. The South Carolina Office of Regulatory Staff shall notify all South Carolina confinement facilities, the South Carolina Sheriff’s Association, and the South Carolina Jail Administrators, that inmate service providers in South Carolina are telephone utilities subject to regulation by the Commission and must possess a Certificate of Public Convenience and Necessity to offer or provide services in South Carolina.

BY ORDER OF THE COMMISSION:

ATTEST:

Swain E. Whitfield, Chairman

Comer H. Randall, Vice Chairman
(SEAL)

June 1, 2018

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SOUTH CAROLINA
DOCKET NO. 2017-354-C

IN RE:

Complaint and Petition for Declaratory Order
of Pay Tel Communications, Inc.,
Complainant/Petitioner v. Lattice Incorporated,
Defendant/Respondent

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CERTIFICATE OF SERVICE

This is to certify that I have caused to be served this day, one (1) copy of the Proposed Order of Pay Tel Communications, Inc. by placing a copy of same in the care and custody of the United States Postal Service (unless otherwise specified), with proper first-class postage affixed hereto and addressed as follows:

VIA ELECTRONIC MAIL SERVICE

Jenny Pittman, Esq.
Office of Regulatory Staff
Legal Department
jpittman@regstaff.sc.gov

s/ John J. Pringle, Jr.
John J. Pringle, Jr.

June 1, 2018
Columbia, South Carolina